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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Republic of Belarus

1. Introduction: Overview of the legal and institutional framework of the Republic of Belarus in the context of implementation of the United Nations Convention against Corruption

The Republic of Belarus ratified the Convention through its Act No. 344 of 25 November 2004 on ratification of the United Nations Convention against Corruption. Belarus deposited its instrument of ratification with the Secretary-General of the United Nations on 17 February 2005.

Under article 33 of Act No. 421 on international treaties to which the Republic of Belarus is party, the provisions of the international treaties to which the Republic of Belarus is party are part of the country's legislation in force; are directly applicable except where an international treaty stipulates that the application of such provisions requires the adoption (promulgation) of a domestic legislative act; and are given effect by the legislative act whereby the Republic of Belarus expresses its consent to be bound by the international treaty in question.

The main legislative acts relating to the fight against corruption include the Constitution, the Criminal Code, the Code of Criminal Procedure, the Civil Code and specific legislation such as the Anti-Corruption Act (Act No. 305 of 2015), Act No. 165 on measures to counter the legalization of proceeds of crime, the financing of terrorist activities and the financing of the proliferation of weapons of mass destruction (2014), the Police Operations Act (Act No. 307 of 2015) and the Civil Service Act (Act No. 204 of 2003).

The institutional system of Belarus for preventing and combating corruption includes institutions and bodies entrusted with anti-corruption functions, namely the Prosecutor-General's Office, the Ministry of the Interior and the State Security Agency, and bodies involved in the fight against corruption, such as the State Audit Committee and its departments and the Investigative Committee.

In Belarus, international cooperation in relation to extradition and criminal proceedings is regulated by international treaties and section XV of the Code of Criminal Procedure.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Under article 4, paragraph 4, of the Criminal Code, the following categories of officials are defined:

(1) Government representatives: members of the House of Representatives, the lower house of the National Assembly of the Republic of Belarus; members of the Council of the Republic, the upper house of the National Assembly of the Republic of Belarus; members of local councils of deputies; and civil servants who are authorized, within the limits of their competence, to issue orders and make decisions in respect of persons other than their subordinates;

(2) Civil society representatives: persons who are not civil servants but are vested, in accordance with established procedure, with the same authority as government representatives when fulfilling their duties relating to the preservation of public order, the combating of crime and the administration of justice;

(3) Persons who permanently, temporarily or by virtue of special authorization hold posts involving the performance of managerial, administrative or finance-related duties in institutions, organizations or enterprises (irrespective of form of ownership)

or in the armed forces or other military forces or units of the Republic of Belarus, or persons duly authorized to perform legal acts;

(4) Officials of foreign States, members of foreign public assemblies, officials of international organizations, members of international parliamentary assemblies, judges and officials of international courts.

"Officials holding positions of responsibility" (art. 4, para. 5, of the Criminal Code) are understood to mean:

(1) The President of the Republic of Belarus, the Speaker of the House of Representatives, the Speaker of the Council of the Republic and the Prime Minister of the Republic of Belarus, and their deputies;

(2) Heads and deputy heads of government bodies directly under the authority of or accountable to the President, Parliament or the Government of the Republic of Belarus;

(3) Heads and deputy heads of local councils of deputies or executive or administrative bodies;

(4) Judges;

(5) Prosecutors of the provinces, the city of Minsk, districts, city districts, cities and towns, inter-district transport prosecutors and transport prosecutors of equivalent rank, and their deputies;

(6) Chiefs of investigative units and of bodies responsible for initial inquiries, and their deputies, and investigators;

(7) Heads and deputy heads of State audit, internal affairs, State security, border control, financial investigations, customs and tax authorities;

(8) Other officials whose posts are included in the staff roster of the Head of State of the Republic of Belarus and the staff roster of the Council of Ministers of the Republic of Belarus.

The term "chief" (art. 4, para. 6, of the Criminal Code) is understood to mean a person to whom the status of member of the armed forces extends and who, by virtue of his or her official position or rank, is entitled to issue orders to subordinates and enforce those orders.

In addition, in accordance with article 2 of the Convention, any person holding office in a State body, irrespective of that person's seniority, is regarded as an official. The list contained in article 4 of the Criminal Code does not include "any other person who performs a public function, including for a public agency or public enterprise, or provides a public service", as required by article 2 of the Convention.

Active bribery of officials is partially covered by article 431 of the Criminal Code.

Some elements of article 15 of the Convention, such as the promise or offering of a bribe or bribery for the benefit of another person or entity, are not covered by article 431 of the Criminal Code.

Nevertheless, the promise or offering of a bribe is regarded as preparation for the offence of active bribery in accordance with article 13, paragraph 1, and article 16, paragraph 8, of the Criminal Code. Liability for preparation for the offence of active bribery arises from article 431 of the Criminal Code, preparation thus entailing the same liability as the commission of the offence itself, as provided for in article 13 of the Criminal Code.

Passive bribery is a criminal offence under article 430 of the Criminal Code. Article 430, paragraph 1, of the Criminal Code establishes liability for, inter alia, passive bribery committed by an official for his or her benefit or for the benefit of persons close to him or her. Article 430, paragraph 2, establishes extortion as an aggravating circumstance. Solicitation of a bribe is not explicitly provided for under

article 430, but may be considered as preparation for the offence of passive bribery. Passive bribery for the benefit of a natural or legal person other than persons close to the official receiving the bribe is not covered by article 430.

Further, according to paragraph 6 of Decision No. 6 of 26 June 2003 of the Plenum of the Supreme Court of the Republic of Belarus on judicial practice in cases involving bribery, if a conditional bribe is not received for reasons beyond the control of the bribe-taker, the acts committed nonetheless constitute an attempt to receive a bribe. Liability for such attempt arises from article 430 of the Criminal Code, is therefore the same as liability for the commission of the offence itself, as provided for under article 14 of the Criminal Code.

In addition, article 433 of the Criminal Code establishes the liability of employees of State bodies other than officials for accepting illegal remuneration. That article does not cover the elements described in the preceding paragraph. It is worth noting that there is no article in the Criminal Code that establishes the provision of illegal remuneration as a criminal offence.

Non-material advantages are not considered bribes.

Article 432 of the Criminal Code establishes the intermediation in bribery as a separate offence.

Under article 4, paragraph 4 (4), of the Criminal Code, the general definition of officials includes officials of foreign States, members of foreign public assemblies, officials of international organizations, members of international parliamentary assemblies, judges and officials of international courts. Thus, bribery of foreign officials is also covered by articles 431 and 430 of the Criminal Code.

According to article 4, paragraph 4 (3) of the Code, the term "official" also encompasses persons who permanently, temporarily or by virtue of special authorization hold posts involving the performance of managerial, administrative or finance-related duties in institutions, organizations or enterprises (irrespective of form of ownership) or in the armed forces or other military forces or units of the Republic of Belarus, or persons duly authorized to perform legal acts.

Therefore, articles 431 and 430 of the Criminal Code may also be applied to bribery in the private sector, but cover a limited range of persons, namely those performing managerial or organizational functions in private-sector entities.

Moreover, article 252 of the Criminal Code establishes criminal liability for active or passive bribery committed by an employee of an individual entrepreneur or legal entity other than an official through the provision of money, securities, other property or property-related services in return for an act (or deliberate failure to act) that concerns the work performed by that employee and is carried out in the interests of the bribe-giver and in the knowledge that that action or failure to act may cause harm to the interests of the owner or the owner's clients. In addition, article 253 of the Criminal Code establishes liability for active and passive bribery committed by participants in and organizers of professional sports competitions and commercial entertainment contests.

The legislation of Belarus does not contain any specific provisions establishing criminal liability for trading in influence. Such liability may arise from various articles of the Criminal Code (arts. 424, 431, 432 (on intermediation in bribery) and 430).

Money-laundering, concealment (arts. 23 and 24)

The laundering of proceeds of crime is an offence under article 235 of the Criminal Code.

The experts conducting the review noted that the element of the use of property, knowing that such property is the proceeds of crime (art. 23, subpara. 1(b)(i), of the Convention) was not covered.

Criminal liability for the acts set out in article 23, subparagraph 1 (b)(ii), of the Convention is established under the provisions of the Criminal Code on complicity (art. 16), preparation (art. 13) and attempt (art. 14).

In Belarus, any criminal offence that generates proceeds, including corruption offences, may be considered a predicate offence for money-laundering.

The legislation of Belarus does not provide that the offences set forth in article 23, paragraph 1, of the Convention do not apply to the persons who committed the predicate offence.

Concealment (art. 24 of the Convention) is partially covered by articles 236 and 405 of the Criminal Code. In addition, a person who promises in advance to conceal an offender, the tools or instrumentalities used in the commission of an offence, evidence of an offence or items acquired by criminal means, or a person who promises in advance to acquire or sell such items, is considered an assistant in the offence (art. 16 of the Criminal Code).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Liability for embezzlement through the abuse of functions is established under article 210 of the Criminal Code. Liability for misappropriation or misuse of entrusted property is established separately in article 211 of the Criminal Code. The diversion of property is not explicitly dealt with in the Criminal Code.

The above-mentioned articles, and in addition article 212 of the Criminal Code (embezzlement using computer technology), also apply to embezzlement in the private sector.

Abuse of functions (art. 19 of the Convention) is covered by articles 424, 425 and 426 of the Criminal Code. One of the elements incurring liability under those articles is the causing of large-scale damage or significant harm to the rights or legitimate interests of citizens or to State or public interests.

Article 36 of the Anti-Corruption Act (Act No. 305 of 2015) provides for civil liability in the form of forfeiture to the State of income whose origin the public official cannot explain.

Obstruction of justice (art. 25)

Article 25 (a) of the Convention is reflected in articles 404 and 394 of the Criminal Code. Article 404 of the Criminal Code covers most of the elements listed in that provision of the Convention, including subornation of a witness, but does not establish the promise or offering of an undue advantage as separate elements. Interference in the production of evidence is not covered under article 404 of the Criminal Code. If violence is used to coerce a person into giving false testimony, criminal liability arises for incitement to commit an offence under article 401 (false testimony) or article 402 (refusal to give testimony or avoidance of testimony by a witness or victim, or refusal to perform duties or avoidance of duties by an expert or interpreter) of the Criminal Code; and, on the basis of the combination of offences, for the applicable offence against human life or health (such as murder (art. 139 of the Criminal Code) or grievous bodily harm (art. 147 of the Code)).

Article 25 (b) of the Convention is covered under articles 364, 365, 366, 388, 389 and 390 of the Criminal Code.

Liability of legal persons (art. 26)

The civil liability of legal persons for corruption is governed by the general regulations of the Civil Code.

Administrative liability for the offences established in the Convention is not specifically provided for.

According to the principles of criminal law applied in the Republic of Belarus, only natural persons may be held criminally liable for an offence.

Participation and attempt (art. 27)

Participation in an offence as organizer, assistant or instigator is a constituent element of complicity in an offence (art. 16 of the Criminal Code).

"Attempt" is defined in article 14 of the Criminal Code.

Belarus has also criminalized preparation for an offence (art. 13 of the Criminal Code).

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Under article 62 of the Criminal Code, the court, when sentencing an offender, applies the principle of "individualized" punishment, that is, when deciding on the punishment to be imposed it takes into consideration the nature of the offence committed and the degree of danger to the public it poses, the motives and intentions behind the acts committed, the identity of the offender, the nature and extent of the harm or damage caused, the proceeds derived from the offence, any mitigating or aggravating circumstances and, in a private prosecution, the opinion of the injured party.

In accordance with the Constitution and the Code of Criminal Procedure, the President of the Republic of Belarus and members of Parliament enjoy immunity, and a special procedure applies to criminal proceedings against certain categories of officials.

The President may be removed from office for treason or other serious crimes. In such cases, the decision to file charges and initiate an investigation shall be considered adopted if not less than one third of the House of Representatives proposes such action and the majority of the House of Representatives in plenary votes in favour. The investigation of the charges is organized by the Council of the Republic. The President is considered removed from office if not less than two thirds of the Council of the Republic in plenary and not less than two thirds of the House of Representatives in plenary vote in favour of his or her removal.

During their term of office, members of the House of Representatives and the Council of the Republic may be arrested or otherwise deprived of personal liberty only with the prior consent of the chamber concerned, except in the case of treason or other serious crimes and arrest at the scene of the crime.

Chapter 49 of the Code of Criminal Procedure provides for a special procedure applicable to criminal proceedings against certain categories of officials, namely: (1) Persons whose posts are included in the staff roster of the Head of State of the Republic of Belarus; (2) Members of the House of Representatives and of the Council of the Republic of the National Assembly of the Republic of Belarus; (3) Members of the provincial, city of Minsk, district, city, town or rural councils of deputies; (4) Judges; (5) Lay judges during their period of service in court; (6) Prosecutors, chiefs of investigative units and investigators. Use of the special procedure requires the consent of the relevant bodies, within the limits of their respective areas of competence, to the application of coercive measures and the initiation of criminal proceedings against such officials.

Belarusian legislation does not provide for discretionary powers on the part of prosecutors or investigators with respect to the institution of criminal proceedings. The grounds for instituting criminal proceedings are set out in the Code of Criminal Procedure of the Republic of Belarus. Where any such grounds are established, criminal proceedings must always be instituted.

Article 30 (4) of the Convention has been implemented through articles 120–125, 129–130 and 132 of the Code of Criminal Procedure.

Article 30 (5) of the Convention has been implemented through articles 90–92 of the Criminal Code.

Officials accused of corruption offences may be suspended under article 131 of the Code of Criminal Procedure.

Article 51 of the Criminal Code establishes that the court may impose the penalty of disqualification from holding certain posts or engaging in certain activities. Furthermore, according to article 33, subparagraph 1.10-1, of the Civil Service Act (Act No. 204), the fact that a person holds a criminal record constitutes a ground for the refusal of admission to the civil service. The commission of a serious or especially serious offence against the interests of the service or a serious or especially serious offence involving the abuse by an official of his or her functions also constitute grounds for the refusal of admission to the civil service (subpara. 1.10-2 of the same article). The latter applies regardless of whether the person has a criminal record.

Officials prosecuted under criminal law may also face disciplinary action.

Admission of guilt, sincere remorse or active assistance in the detection of an offence, in the exposure of other accomplices to an offence or in the search for property acquired by criminal means constitute extenuating circumstances (art. 63, para. 1, subparas. 1-3, of the Criminal Code), and the court may recognize the offender's sense of responsibility or other circumstances as extenuating circumstances (art. 63, para. 2, of the Criminal Code). If there are exceptional circumstances that considerably mitigate the danger to society posed by the offence, and taking into consideration the character of the offender, the court may impose a less severe sentence or a punishment less severe than the minimum prescribed by the relevant article, or may decide not to impose an additional punishment prescribed as mandatory (art. 70, para. 1, of the Criminal Code).

Under article 20 of the Criminal Code, any participant in a criminal organization or group (except the organizer or leader) who voluntarily reports the existence of that criminal organization or group and assists in its exposure is exempted from criminal liability for participation in a criminal organization or group and for any offence that he or she has committed as a member of that organization or group, except in the case of serious or especially serious offences against human life or health.

First-time offenders who have committed an offence that does not present a grave danger to society, or a less serious offence, may be exempted from liability if, after committing the offence, they voluntarily surrender themselves to the authorities or actively assist in shedding light on the offence, provide compensation for the damage caused, return assets that account for their unjustified enrichment or surrender income obtained by criminal means, or deposit into the bank account of the body conducting the criminal proceedings compensation amounting to 50 per cent of the damage (harm) caused, but not less than thirty base units (art. 88, para. 1, of the Criminal Code). The exemption from criminal liability of persons who have committed an offence falling under any another category is permitted in the cases provided for in article 88 (1) of the Criminal Code and in the cases expressly provided for in the special section of the Criminal Code.

The Criminal Code and the Code of Criminal Procedure also provide for the possibility of a pretrial cooperation agreement. If the defendant meets the terms of that agreement, the term or amount of the penalty imposed may not exceed half the maximum term or amount of the most severe penalty prescribed by the relevant article of the Criminal Code (art. 69, para. 1, of the Code).

According to the notes to articles 431 and 432 of the Criminal Code, bribe-givers and intermediaries in bribery are exempted from liability if, after committing the offence, they voluntarily confess to their criminal conduct. The fact that the Criminal Code does not establish a time frame within which such statements should be made may lead to abuse. Automatic exemption from liability may pose difficulties in adequately assessing the guilt of the bribe-giver.

Protection of witnesses and reporting persons (arts. 32 and 33)

Protection measures for experts, victims and witnesses are provided for in chapter 8 of the Code of Criminal Procedure and include the non-disclosure of identifying information; exemption from the requirement to appear in court; closed court sessions and the use of technical surveillance equipment; interception of conversations conducted using communications technology and of other conversations; personal protection and protection of the home and property of the protected person; alteration of passport data and substitution of documents; and prohibition of the release of information (art. 66 of the Code of Criminal Procedure). Other protection measures may be applied provided that they do not contravene the Code of Criminal Procedure and other Belarusian laws (art. 66, para. 3).

The procedure for the application of protection measures is established in the Code of Criminal Procedure and the Regulations governing Protection Measures.

Belarus is party to the Agreement on the Protection of Participants in Criminal Proceedings (2006) among the States members of the Commonwealth of Independent States, which provides for the relocation of protected persons to other States parties to the Agreement.

Persons who provide information on corruption offences to the competent authorities are afforded protection on the basis of the Anti-Corruption Act (Act No. 305).

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Confiscation of the proceeds of crime, and of tools and instrumentalities used in the commission of the offence and found to be in the possession of the convicted person, is provided for under article 61, paragraph 6, of the Criminal Code. The same paragraph also provides for the confiscation of all items directly linked to the offence if those items are not to be returned to the victim or another person. In addition, article 61, paragraph 7, establishes that if confiscation of the property obtained by criminal means or of the income derived from such property is not possible, including in cases where such property or income has been converted or transformed into other property, the monetary equivalent of that property may be confiscated.

On the basis of the Anti-Corruption Act (Act No. 305 of 15 July 2015), special anti-corruption units, in performing their tasks, are entitled to suspend in whole or in part, subject to the authorization of the prosecutor, the financial transactions of natural and legal persons for up to 10 days, as well as to restrict the right of those persons to dispose of property where there are sufficient grounds to believe that the money or other property concerned was received from persons involved in the commission of corruption offences or in the laundering (legalization) of income obtained by criminal means.

Actions to identify, trace and freeze proceeds of corruption are also carried out by the financial monitoring body (the Financial Monitoring Department of the State Audit Committee) in accordance with Act No. 165 of 30 June 2014 on measures to prevent the legalization of income obtained by criminal means, the financing of terrorist activities and the financing of the proliferation of weapons of mass destruction.

Further, under article 132 of the Code of Criminal Procedure, the body conducting the initial inquiry, the investigator, the prosecutor and the court are entitled to order the seizure of property.

The administration of frozen, seized or confiscated property is governed by Presidential Decree No. 63 of 19 February 2016 on improving the administration of property that has been recovered, seized or forfeited to the State, and by the Regulations governing the procedure for the registration, storage, evaluation and sale of property that has been recovered, seized or forfeited to the State.

Under article 121 of Banking Code (No. 441) of the Republic of Belarus, bank secrecy may not be invoked to prevent the provision of information to law enforcement authorities. The provision of such information requires the authorization of a prosecutor or his or her deputy.

The protection of the interests of third persons who have acquired property liable to confiscation in good faith is not explicitly provided for under the existing legislation.

Statute of limitations; criminal record (arts. 29 and 41)

The Republic of Belarus has established a sufficiently long statute of limitations period for offences established by the Convention (between 5 and 15 years, depending on the gravity of the offence) and its legislation also provides for the possibility of suspending the statute of limitations where the offender has eluded the criminal prosecution authority or the court (art. 83, para. 4, of the Criminal Code).

Article 8 of the Criminal Code allows for convictions in a foreign State to be taken into account on the basis of an international agreement. Belarus is party to such agreements within the framework of the Commonwealth of Independent States, as well as on a bilateral basis.

Jurisdiction (art. 42)

Article 5 of the Criminal Code establishes jurisdiction over offences committed in Belarus (para. 1) or on board vessels registered at a Belarusian port and located in open waters beyond the borders of the Republic of Belarus, or an aircraft registered in the Republic of Belarus and located in airspace beyond the country's borders, unless otherwise provided for in an international agreement (para. 3).

According to article 6, paragraph 1, of the Criminal Code, as a general rule, nationals of Belarus and stateless persons habitually resident in its territory who have committed an offence beyond its borders are subject to criminal liability under the Criminal Code of Belarus if the act in question is an offence in the State where it was committed and if the person has not been convicted in another State. Foreign nationals and stateless persons habitually resident in Belarus who have committed an offence outside Belarus are subject to criminal liability under the Criminal Code of Belarus in the case of serious or especially serious offences intended to harm the interests of Belarus.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Belarus has established various ways to address the consequences of corruption. Property received by officials as a result of corruption is subject to surrender (recovery) under article 40 of the Anti-Corruption Act. Decisions made by State bodies, organizations or officials as a result of the commission of corruption offences or offences that create conditions conducive to corruption may be annulled (art. 41 of the Anti-Corruption Act).

Transactions carried out by means of an act of corruption may be invalidated on the basis of articles 169, 170 and 171 of the Civil Code.

Article 42 of the Anti-Corruption Act establishes a ten-year statute of limitations period for claims relating to compensation for harm caused by a corruption offence or an offence that creates conditions conducive to corruption. The procedure for compensation follows the rules set out in criminal and civil law.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

In accordance with article 8 of the Anti-Corruption Act and Presidential Decree No. 330 of 16 July 2007 on special units for combating corruption and organized crime, special units for combating corruption and organized crime have been established within the Prosecutor-General's Office and the internal affairs and State

security authorities. In addition, specialized anti-corruption units operate within the Investigative Committee of the Republic of Belarus.

Under article 10 of the Anti-Corruption Act, State authorities and other organizations are obliged to convey information regarding evidence of corruption to the State authorities responsible for combating corruption.

Cooperation between financial institutions and law enforcement authorities with respect to corruption offences is governed by Act No. 165 of 30 June 2014 on measures to prevent the legalization of income obtained by criminal means, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, which establishes a sequence of actions to be taken in the event of detection of a suspicious transaction.

Citizens have the possibility to report corruption offences to the law enforcement authorities, including via helplines or email.

2.2. Successes and good practices

Overall, the following successes and good practices in the implementation of chapter III of the Convention are highlighted:

- The possibility of the conclusion of procedural agreements with persons suspected or accused of corruption offences as a mechanism to facilitate the detection of corruption offences and cooperation with law enforcement authorities.

The establishment, in article 42 of the Anti-Corruption Act, of a ten-year limitation period for claims relating to compensation for damage caused by the commission of a corruption offence, as a measure to increase the effectiveness of the mechanism for compensation for damage caused as a result of corruption.

2.3. Challenges in implementation

It is recommended that the Republic of Belarus take the following steps in order to further strengthen its existing anti-corruption measures:

- Bring its definitions of public officials into line with the requirements of article 2 of the Convention;
- Consider establishing the offering, promise and solicitation of bribes as separate elements of the offence of bribery (arts. 15, 16 and 21);
- Explicitly establish liability for active and passive bribery in the interests of third parties in the Criminal Code (arts. 15 and 16);
- Continue to explore the possibility of criminalizing the giving (and acceptance of) an undue advantage of a non-material nature (arts. 15 and 16);
- Consider establishing in its criminal legislation more comprehensive provisions on bribery in the private sector, including all of the elements set out in article 21 of the Convention;
- Consider criminalizing the diversion by a public official of property entrusted to that public official as a separate element in the Criminal Code (art. 17);
- Consider including the use of property, knowing that such property is the proceeds of crime, as a separate element of the offence of laundering (legalization) of proceeds of crime (art. 23);
- Consider establishing as separate elements the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences (art. 25 (a));
- Continue to work to establish the effective liability of legal persons, in line with the requirements of article 26 of the Convention;

- Provide for the protection of the rights of bona fide third parties (art. 31 (9));
- Consider adopting legislation governing in detail the mechanism for providing protection for persons who report facts concerning corruption offences (art. 33);
- Consider amending the wording of the notes to articles 431 and 432 of the Criminal Code in order to preclude automatic exemption from criminal liability where the offender merely declares his or her guilt, thus preventing possible abuse of those provisions and enabling adequate assessment of mitigating circumstances and the degree of cooperation provided by bribe-givers, depending on the case in question (art. 37).

3. Chapter IV: International cooperation

According to Act No. 284 of 18 May 2004 on international legal assistance in criminal matters, such assistance is provided on the basis of international treaties to which the Republic of Belarus is party. In the absence of a relevant international treaty, international legal assistance in criminal matters is provided on the basis of the principle of reciprocity. Act No. 344 of 25 November 2004 on ratification of the United Nations Convention against Corruption establishes, with reference to article 44 (6) of the Convention, that the Republic of Belarus shall take the Convention as the legal basis for cooperation on extradition with other States Parties to the Convention (art. 1 of the Act). In addition, Belarus clarified during the country visit that it considers article 46 of the Convention as the legal basis for cooperation on international legal assistance in criminal matters. In Belarus, detailed rules contained in section XV of the Code of Criminal Procedure provide for the provision of legal assistance, including with respect to extradition, in the absence of a treaty, on the basis of the principle of reciprocity. In practice, these rules also apply if the procedure for the provision of international legal assistance in criminal matters is not established in an international treaty to which the Republic of Belarus is party, on the basis of article 1, paragraph 5, of the Code of Criminal Procedure. Furthermore, in accordance with paragraph 2 of Decision No. 10 of 24 September 2015 of the Plenum of the Supreme Court of the Republic of Belarus on the application by the courts of legislation governing the provision of international legal assistance in criminal matters, the procedure established in section XV of the Code of Criminal Procedure of the Republic of Belarus applies when international legal assistance in criminal matters is provided on the basis of the principle of reciprocity, and also when such assistance is provided in accordance with an international treaty to which Belarus is party, if no other procedure is defined in such a treaty (art. 1, para. 5, of the Code of Criminal Procedure).

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

In the Republic of Belarus, extradition is governed by international agreements and by section XV of the Code of Criminal Procedure. Section XV of the Code of Criminal Procedure also applies in the absence of a relevant international agreement, on the basis of the principle of reciprocity.

Decisions on extradition are taken by the Prosecutor-General's Office and may be appealed against in court (arts. 494 and 507 of the Code of Criminal Procedure).

Extradition for the purposes of criminal prosecution is not allowed if the act in connection with which the request is made is not an offence under the Criminal Code of the Republic of Belarus (art. 481, para. 2, of the Code of Criminal Procedure) or is punishable by deprivation of liberty for a term of less than one year under the legislation of Belarus or that of the State requesting extradition (art. 484, subpara. 1 (6), of the Code of Criminal Procedure).

If the request includes several separate offences, at least one of which is extraditable and some of which are not extraditable by reason of their period of

imprisonment, extradition shall be subject to article 484, subparagraphs 1 (7) and (8), of the Code of Criminal Procedure.

Belarusian legislation does not provide for a simplified extradition procedure. Reference to article 44 (9) of the Convention in a request for extradition may expedite the execution of that request.

In accordance with articles 510 and 513 of the Code of Criminal Procedure, the person whose extradition is requested may be arrested and placed in custody or under house arrest for a period of not more than two months from the time of arrest. That period may be extended for up to 12 months on the basis of a decision issued by a prosecutor or the Prosecutor-General, stating the reasons for such extension (art. 513, para. 3, of the Code of Criminal Procedure).

If the person sought is a citizen of the Republic of Belarus, that fact constitutes a ground for the refusal of extradition (art. 484, subpara. 1 (1), of the Code of Criminal Procedure). In the case of refusal on that ground, the Prosecutor-General's Office of Belarus confirms its readiness to carry out the criminal prosecution of the person sought, in conformity with article 477 of the Code of Criminal Procedure.

Paragraph 14 of article 44 of the Convention is directly applicable. The rights of a person whose extradition is sought are guaranteed under articles 507–509 of the Code of Criminal Procedure.

Paragraph 15 of article 44 of the Convention is directly applicable to requests for extradition on the basis of the Convention. Extradition is prohibited if the purposes of an extradition request are prosecution or punishment of the person sought on the basis of race, sex, religion, citizenship, ethnicity, membership of a particular social group or political opinions (art. 484, subpara. 1 (4), of the Code of Criminal Procedure).

The Republic of Belarus is party to multilateral treaties on cooperation in extradition matters, including the Commonwealth of Independent States (CIS) Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (concluded in Minsk in 1993 and amended in Chisinau in 2002). Belarus has also concluded a series of bilateral treaties governing extradition matters.

The transfer of sentenced persons is governed by section XV of the Code of Criminal Procedure. Belarus is party to the CIS Convention on the transfer of convicted persons to serve out their sentences (1998).

The Code of Criminal Procedure does not provide for the transfer of criminal proceedings for the purpose of the proper administration of justice, for example when the case involves several jurisdictions.

Mutual legal assistance (art. 46)

Legal assistance is provided on the basis of international treaties or the principle of reciprocity (art. 2 of the Act on International Legal Assistance in Criminal Matters and section XV of the Code of Criminal Procedure).

The Prosecutor-General's Office considers requests for legal assistance in the form of the measures listed in article 494, paragraph 1, of the Code of Criminal Procedure. The Supreme Court has competence to consider requests for the service of procedural and other documents relating to criminal cases before the courts and requests to enforce criminal judgments.

The Belarusian authorities reported that legal assistance is afforded to the fullest extent possible, including in relation to offences for which legal persons may be liable. Dual criminality is a requirement for the provision of legal assistance.

Mutual legal assistance for most of the purposes set out in the Convention may be provided on the basis of direct application of the Convention. However, the experts conducting the review noted that it would be desirable for domestic law likewise to regulate in detail all matters pertaining to mutual legal assistance.

Belarus confirmed the applicability of article 46, paragraphs 9–29, of the Convention to its relations with States Parties with which it has not concluded any bilateral treaties on legal assistance.

Paragraphs 10, 11 and 12 of article 46 of the Convention are implemented through the following articles of the Code of Criminal Procedure: article 472 on the conditions of execution of a request made by an authority of a foreign State for the temporary transfer of a person for the purposes of legal proceedings; article 476 on the conditions of execution of a request made by an authority of a foreign State for the temporary surrender of a person for the purposes of legal proceedings; article 482 on grounds for refusal of a request made by an authority of a foreign State for the temporary transfer of a person for the purposes of legal proceedings; and article 500 on the procedure for the temporary transfer of a person on the basis of an order to execute a request made by an authority of a foreign State.

The central authority for the purposes of article 46 of the Convention is the Prosecutor-General's Office. Belarusian and Russian are acceptable languages for requests for legal assistance.

Belarus accepts requests by electronic or other means of communication, including facsimile. The execution of the request is subject to confirmation of its transmission or transfer of the original. Requests may be made through the International Criminal Police Organization (INTERPOL). The provisions of article 16, paragraph 14, of the Convention apply in the Republic of Belarus.

The requirements of the Convention with respect to the content and form of requests are applied by Belarus on the basis of direct application of article 46, paragraph 15, of the Convention.

The procedural legislation of the requesting State may be applied, unless its application would contravene the laws of the Republic of Belarus (art. 497, para. 2, of the Code of Criminal Procedure).

The grounds for refusing a request for legal assistance are listed in chapter 51 of the Code of Criminal Procedure and are largely in line with article 46, paragraph 21, of the Convention. The competent authority of Belarus informs the requesting party of the reasons for refusal of the request (art. 495, para. 6, of the Code of Criminal Procedure).

In practice, the costs of providing legal assistance are borne by Belarus, apart from expenses arising from the summoning of participants in criminal proceedings to the territory of the requesting State and measures to ensure their safety, the conduct of expert assessments and the transit of extradited persons.

Belarus is party to multilateral conventions on legal assistance (such as the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters as adopted in 1993 and as amended in 2002). The Republic of Belarus has concluded several bilateral treaties on legal assistance in criminal matters.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The Prosecutor-General's Office of Belarus is party to the Agreement on Cooperation between the Offices of the Prosecutor-General of the CIS Member States in Combating Corruption, and also to bilateral agreements with the prosecution services of other States.

Belarus considers the Convention as the basis for cooperation with other States Parties.

The operational exchange of information is conducted through legal advisers attached to embassies and officers responsible for liaison with other States' law enforcement authorities.

The Financial Monitoring Department of the State Audit Committee is a member of the Egmont Group of Financial Intelligence Units, within the framework of which

information on suspicious transactions is exchanged with foreign financial intelligence units. In addition, the Financial Monitoring Department has signed a number of bilateral memorandums with foreign financial intelligence units on cooperation in the exchange of information.

The possibility of conducting joint investigations is provided for in article 63 of the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (2002). Provisions on the possibility of establishing joint investigation teams are also contained in some of the bilateral treaties to which the Republic of Belarus is party.

The Belarusian law enforcement authorities may use special investigative techniques (arts. 15 and 18 of the Police Operations Act). Operational and investigative activities may be carried out on the territory of Belarus and other States in accordance with that Act and international treaties (for example, art. 108 of the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (2002) and the Agreement between the Government of the Republic of Belarus and the Government of the Republic of Uzbekistan on Cooperation in Combating Crime).

3.2. Successes and good practices

Overall, the following successes and good practices in the implementation of chapter IV of the Convention are highlighted:

- Belarus is a party to regional, multilateral and bilateral agreements on international cooperation in criminal matters, including the fight against corruption;
- Belarus is a party to a number of international bilateral and multilateral intergovernmental and inter-agency agreements on cooperation in combating crime, which cover corruption offences.

3.3. Challenges in implementation

It is suggested that the following recommendations be considered with a view to strengthening and consolidating the anti-corruption measures taken by the Republic of Belarus:

- Continue efforts to collect and use statistical and practical information on examples of international cooperation in the fight against corruption in order to better evaluate the effectiveness of mechanisms for cooperation in the fight against corruption (arts. 44 and 46);
- Consider the possibility of adopting amendments to section XV of the Code of Criminal Procedure in order to make clear the possibility of applying the provisions contained in that section not only in relation to requests executed on the basis of the principle of reciprocity, but also in cases where an international treaty to which the Republic of Belarus is party does not define a detailed procedure for the provision of a specific type of international legal assistance (arts. 44 and 46);
- Consider the possibility of establishing an expedited extradition procedure in the Code of Criminal Procedure and simplifying evidentiary requirements relating thereto in relation to requests on the basis of the Convention, in accordance with article 44, paragraph 9, of the Convention;
- Consider the possibility of adopting additional provisions supplementing section XV of the Code of Criminal Procedure that regulate in detail the provision of legal assistance for the purposes listed in article 46 (3) of the Convention;

- Explore the possibility of providing mutual legal assistance on the basis of requests made pursuant to the Convention in the absence of dual criminality (art. 46 (9));
- Consider the possibility of transferring proceedings for the prosecution of an offence established in accordance with the Convention to other States Parties in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution (art. 47);
- Continue to actively strengthen cooperation with law enforcement authorities of States Parties to the Convention other than the CIS member States within the framework of article 48 of the Convention, including through the establishment of direct contacts for the exchange of operational information;
- Consider the possibility of entering into additional agreements with other States Parties to the Convention on the use of special investigative techniques in the investigation of corruption offences.

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II. Executive summary

Gambia

1. Introduction: Overview of the legal and institutional framework of the Gambia in the context of implementation of the United Nations Convention against Corruption

The Gambia ratified the United Nations Convention Against Corruption on 8 July 2015. The Gambia is a dualist country. Treaties that have been signed and ratified by the Gambia must be incorporated into the national legal order by way of an Act of the National Assembly of the Gambia to have effect.

An anti-corruption bill of 2018, which should domesticate some of the provisions of the Convention against Corruption, was awaiting adoption at the National Assembly at the time of the review.

The legal system of the Gambia is based on common law.

The most relevant anti-corruption legislation in the Gambia are the Constitution, the Criminal Code (CC), the Criminal Procedure Code (CPC), the Anti-Money Laundering and Combating of Terrorist Financing Act of 2012 (AML/CFT Act), the Economic Crimes Act (ECA), the National Intelligence Agencies Act and the Evidence Act.

The most important authorities in the fight against corruption are the Attorney General's Office, the Director of Public of Prosecutions (DPP), the police force of the Gambia, the State Intelligence Service (SIS) and the Financial Intelligence Unit (FIU).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

The Gambia criminalizes active bribery in sections 86(2) (official corruption), 360 (corrupt practices), 361 (secret commission on Government contracts) and 362 (presumption as to corrupt practices) of the CC. Sections 86(1), 360, 361 and 362, as well as sections 87 (extortion by public officer) and 88 (public officers receiving property to show favour) of the CC criminalize passive bribery. Indirect bribery is criminalized when these sections are read together with section 23 CC (principal offenders). Section 23 CC lists various forms of criminal responsibility including counselling or procuring any other person to commit an offence.

The definition of a public official for the above sections is found in section 3(2) CC and excludes elected officials. Sections 360, 361 and 362 CC are limited to persons serving under a public body that has the power to impose rates or is entrusted with expenditure of Government funds or grants (sect. 359 CC).

Active and passive bribery of foreign public officials and officials of international organizations may be prosecuted when sections 86, 360, 361 and 362 CC are applied together with section 23. Prosecution in such cases would be limited to the conduct that took place in the Gambia only (sect. 4 CC: extent of jurisdiction of courts of the Gambia). However, there have been no practical examples to date.

Trading in influence and bribery in the private sector are not criminalized.

Money-laundering, concealment (arts. 23 and 24)

The AML/CFT Act has adopted verbatim the language of subparagraphs 1(a)(i) and (ii), and 1(b)(i) and (ii) of article 23 of the Convention in defining the crime of money-laundering in section 2. Schedule II of the AML/CFT Act sets out a wide range of predicate offences and includes "corruption and bribery". However, it does not

cover predicate offences committed outside of the Gambia and does not explicitly refer to all the corruption offences.

The relevant provisions of CPC allow for charging persons for the commission of money-laundering offences and its predicate offences (sects. 112 and 114).

Sections 23 (principal offenders), 26 (accessories after the fact), 263 (concealing registers), 297 (receiving stolen property) and 298 (receipt of possession of property stolen abroad) CC prohibit concealment of proceeds of corruption. The term "stolen property" in sections 297 and 298 refer to a property that has been unlawfully taken, extorted, obtained, embezzled, converted or disposed of.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Elements of embezzlement in the public sector are covered by sections 257 (stealing by persons in public service), 258 (stealing by clerks and servants), 259 (stealing by directors or officers of companies), 260 (stealing by agents, etc.), 303 (fraudulent false accounting) and 304 (false accounting by public officer) CC and subsections (d) and (g) of section 5 of the ECA. Section 259 CC includes state-owned companies.

Private sector embezzlement may be prosecuted under CC sections 252 (general punishment for theft), 256 (stealing from the person, etc.), 258–260, 292 (conspiracy to defraud), 300 (trustees fraudulently disposing of trust property) and 301 (directors and officers of corporations or companies fraudulently appropriating property, or keeping fraudulent accounts or falsifying books or accounts).

Abuse of functions is covered by section 90 CC (abuse of office) in part as it only criminalizes an arbitrary act but not an omission. Illicit enrichment is not yet a crime but is being considered for criminalization in a new bill. In addition, section 298A of CC allows for a criminal prosecution of persons who possess anything which may reasonably be suspected of having been stolen or unlawfully obtained when such persons fail to give a satisfactory explanation how they came to possess it.

Obstruction of justice (art. 25)

Crimes of subornation of perjury (sect. 25), obstructing or attempting to obstruct the due course of justice by dissuading, hindering or preventing a witness from giving evidence (sect. 102 of CC) and obstructing, interfering or preventing the execution of any legal process, civil or criminal (sect. 106 of CC) partially address the requirements of article 25. In addition, section 111 criminalizes obstructing or resisting a person lawfully charged with the execution of an order or a warrant of a court.

Liability of legal persons (art. 26)

The AML/CFT Act establishes the liability of legal persons involved in money-laundering in section 22(b) and provides for a fine or an order for the revocation of the licence of the legal entity or both. The FIU may apply administrative sanctions notwithstanding any court sanction, and revoke the licence or cancel the professional membership of the entity (sect. 24 of the AML/CFT Act).

The Companies Act of 2013 provides for administrative sanctions, including a forced winding-up in section 315 if there was any fraud, misfeasance or other misconduct in connection with the management of the legal person. Common law provides for the liability of companies in tort.

Participation and attempt (art. 27)

The CC gives the definitions of principal offenders (sect. 23), joint offenders (sect. 24), counselling another to commit an offence (sect. 25), accessories after the fact (sect. 26) and incitement to commit and offence (sect. 26A). Attempt to commit any offence is criminalized in sections 364–366 and preparation in the form of

conspiracy is criminalized in sections 368 (conspiracy to commit felony), 369 (conspiracy to commit misdemeanour) and 370 (other conspiracies) of CC.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Under the CC, criminal sanctions for corruption offences include imprisonment, fine, payment of costs, payment of compensation and forfeiture. Forfeiture applies only to a limited number of corruptions offences such as corruption of officials (sect. 86), extortion by public officers (sect. 87), and public officers receiving property to show favour (sect. 88). Courts have the discretion to substitute any imprisonment with a fine (sect. 29).

The Constitution provides to the President of the Republic immunity from civil and criminal proceedings in respect of any act or omission, whether in an official or a private capacity. Prosecution of the President is possible after he or she has vacated the office and if the National Assembly passes a motion justifying that proceedings are in the public interest (sect. 69). Sections 114 and 115 provide for the immunity of members of the National Assembly for anything said or done in the National Assembly and no civil or criminal process may be served or executed on them while they are on their way to, attending or returning from any National Assembly proceedings.

The DPP has discretionary powers to initiate and undertake criminal proceedings and discontinue them at any stage before judgment is delivered. However, the DPP cannot discontinue private prosecutions without the consent of the private prosecutor (sect. 85 of the Constitution and sects. 64–69 of CPC).

Even though there is no legislation that regulates measures to encourage corruption offenders to cooperate with competent authorities, recognizes their cooperation as a mitigating circumstance for the purpose of sentencing or provides them with protection or immunity (except for drug offenders in sect. 89 of DCA), in practice, the police, the DPP and courts may take these factors into account and, consequently, select a lesser charge, discontinue the case or impose a milder sentence.

Sections 99 to 107 of CPC contain detailed measures and a description of the procedure to ensure the presence of the defendant in criminal proceedings pending trial or appeal. The Gambia has adopted parole board guidelines that outline the general policy on early release. However, the guidelines do not specifically address corruption offenders.

General Orders of the Gambia, Civil Service Orders and Public Service regulations allow for disciplinary measures, including dismissals, to be taken against public officials who are accused of corruption offences. They can be taken in addition to any criminal sanctions imposed by courts. Furthermore, section 9 of the Public Service Act establishes that a person who has been convicted of an offence involving dishonesty can only be appointed to a public office after a period of four years. The Prisons Service runs social welfare programmes that provide counselling to prisoners on various issues such as employment.

Protection of witnesses and reporting persons (arts. 32 and 33)

The legislation of the Gambia does not provide for legal basis to protect witnesses, experts who give testimony, victims, their relatives and other persons close to them. However, the police can take practical measures to protect them by assigning pseudonyms or providing physical protection. The opportunity for victims to present their views in criminal trials is not provided.

There is no specific legislation that comprehensively addresses the protection of whistle-blowers in the Gambia. However, the Labour Act states that the filing of a complaint or the participation in proceedings against an employer involving alleged violation of any laws or regulations is not a justification to terminate an employee's appointment or to take disciplinary action against an employee (sect. 83).

Furthermore, the Act guarantees confidentiality of the source of any complaint that concerns a breach of the Act (sect. 12).

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Gambian courts may order the forfeiture to the State of any property which is the proceeds of offences specified under sections 86–88 of CC or, if the property cannot be found or forfeited, of such sum assessed as the value of the property (sect. 33 of CC). The Sheriff's and Civil Process Act empowers the Sheriff to execute judgment orders in section 8.

Proceeds of any offence punishable by imprisonment for a minimum of six months or proceeds of money-laundering and instruments used to commit such offences can be forfeited pursuant to section 57 of the AML/CFT Act. All corruption offences in the CC and other Acts carry sentences of imprisonment longer than six months.

Under the AML/CFT Act, a competent authority investigating relevant offences can apply to the courts for a restraining order against any money or property related to the offences (sects. 51–55). Competent authorities may seek a court order to identify, locate or quantify property of a suspect, including by requesting reporting entities to produce all relevant information (sects. 45 and 61). For seized property, it is usually the investigating police officers who manage it. Courts may also appoint a trustee or receiver for the proper administration of the money or property during the effective period of the restraining order (sect. 51(4)(b)). If a police officer or authorized officer of a competent authority has reasonable grounds to believe that the restrained property is about to be disposed of, they may seize it (sect. 56). Contravention of a restraining order and falsification, concealment, destruction or disposal of any document or material likely to be relevant for a forfeiture or confiscation order or disclosure of the existence or operation of such an order are criminal offences (sects. 54 and 62, respectively).

If the property subject to a forfeiture or confiscation order has been, inter alia, transferred to a third party in good faith under a lawful transaction or co-mingled with other property that cannot be divided without difficulty, courts may order the person to pay an amount equal to the value of the property (sect. 57(3) and (4) of the AML/CFT Act). The property referred above refers to the proceeds, income and gains from assets laundered or terrorist property (sect. 57(2) of the AML/CFT Act).

Bank secrecy is not a ground to refuse production of evidence ordered by a court (sect. 225 of the Evidence Act.) The duty of disclosure under the AML/CFT Act shall have effect notwithstanding any obligations as to secrecy or disclosure restrictions imposed by any other law (sect. 36). Additionally, the FIU can request, obtain and examine any records and databases from any entity (sects. 5 and 13 of the AML/CFT Act).

Rights of bona fide third parties are protected in forfeiture or confiscation procedures (sect. 57 (5)–(9) of the AML/CFT Act).

Statute of limitations; criminal record (arts. 29 and 41)

The criminal legislation of the Gambia does not set any time limits to commence proceedings with regard to corruption offences.

The Evidence Act regulates the circumstances when a previous conviction in a foreign State may be relevant and, if so, prescribes how it must be proved (sects. 68 and 78(3)).

Jurisdiction (art. 42)

Section 4 CC limits its application by the courts in the Gambia to acts committed anywhere within the Gambia, committed outside of the Gambia by a person in the service of the Government or committed partly within and partly outside of the Gambia when such acts would be an offence under the CC.

Section 2 of the AML/CFT Act states that criminal conduct under the Act includes offences committed outside of the Gambia. Similarly, ECA applies to any of the

offences under its section 5 when committed by a citizen of the Gambia or non-citizen resident in or outside of the Gambia when he or she acts in collaboration with any person holding a public office in the Gambia.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Corruption may lead to annulment or rescission of contracts at common law.

CPC grants the courts the power to order the convicted person to pay compensation to persons who suffered material loss or personal injury as a consequence of the offence committed (sect. 145). Common law on tort also allows to seek redress for anyone who suffered damage as a result of corruption.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

There is no specialized anti-corruption authority in the Gambia. The police force of the Gambia and particularly its Fraud and Major Crime Units as well as SIS, are specialized law enforcement agencies. Their independence and mandates are provided under the Constitution and respective Acts. These authorities may form inter-agency panels on an ad hoc basis for major cases that include corruption cases against high-level perpetrators.

A Special Criminal Court with a jurisdiction to hear and determine offences in which public funds and public property are affected is envisioned in sections 134 and 135 of the Constitution. However, these sections are yet to be implemented in practice.

The Gambia has not yet taken measures to encourage cooperation between investigating and prosecuting authorities and the private sector. According to section 5(k) of the AML/CFT Act, FIU may provide training programmes to reporting entities on relevant issues.

2.2. Successes and good practices

- The Gambia has criminalized contravention of a restraining order or causing certain impediments to a forfeiture or confiscation procedure.

2.3. Challenges in implementation

It is recommended that the Gambia:

- Extend the definition of offences to explicitly cover all categories of public officials as required by article 2 of the Convention (arts. 15–20)
- Extend the definition of a public official to explicitly include foreign public officials and officials of public international organizations (art. 16)
- Ensure that the definition of all bribery offences explicitly include indirect giving, offer or promise to or indirect solicitation or acceptance of an undue advantage by a public official (arts. 15, 16, 18 and 21)
- Consider criminalizing trading in influence (art. 18)
- Consider expanding the definition of abuse of office in section 90 of CC to include omissions and obtaining of an undue advantage for another person or entity (art. 19)
- Consider criminalizing illicit enrichment (art. 20)
- Consider criminalizing active and passive bribery in the private sector (art. 21)
- Ensure that the AML/CFT Act lists all the offences established under the Convention as predicate offences instead of using the generic terms "corruption and bribery" (art. 23(2)(b))
- Consider expanding the definition of corruption offences to ensure that all elements are implemented by the existing relevant provisions in its national legislation (arts. 19 and 24)

- Ensure that the existing provisions implementing article 25(1) of the Convention are extended to cover the use of physical force, threats or intimidation to induce false testimony
- Ensure that the existing provisions implementing article 25(2) of the Convention are extended to cover the use of physical force, threats or intimidation to interfere with the exercise of official duties by justice or law enforcement officials in relation to the commission of offences established under the Convention
- Extend the liability of legal persons beyond the offence of money-laundering to include other offences established under the Convention and ensure that such liability is without prejudice to the criminal liability of natural persons who have committed the offences (art. 26)
- Ensure that the punishment of forfeiture or confiscation under CC applies to all offences established under the Convention as opposed to only sections 86–88 CC (arts. 30(1) and 31)
- Endeavour to ensure that the courts exercise their discretion to substitute imprisonment with a fine pursuant to section 29 of CC in a manner that takes into account the gravity of corruption offences (art. 30(1))
- Endeavour to ensure that the discretionary powers of the DPP and of the Attorney General with regard to sections 88–90 of CC are exercised in a way that maximizes the effectiveness of law enforcement measures (art. 30(3))
- Ensure that the definition of "any money or property" in section 51 of the AML/CFT Act and the definition of property subject to forfeiture or confiscation under section 57 of the AML/CFT Act are consistent with the requirements of article 31(1) of the Convention
- Develop more comprehensive regulations with regard to the administration of seized, frozen or confiscated property (art. 31(3))
- Ensure that the freezing, seizure or confiscation measures are also applied to proceeds of crime that have been transformed or converted into other property (art. 31(4))
- Ensure that the requirements of article 32 of the Convention are implemented fully in law and practice
- Consider implementing the requirements of article 33 of the Convention fully in law and practice
- Adopt legislative and administrative measures to encourage cooperation of corruption offenders with competent authorities and to protect them (art. 37(1) and (4))
- Consider the possibility for providing for mitigating punishment, granting immunity to cooperating corruption offenders, and entering into agreements or arrangements with other States to provide for similar treatment if the offenders cooperate with those States (art. 37 (2), (3) and (5))
- Adopt measures to encourage cooperation between national investigating and prosecuting authorities and the private sector and consider encouraging persons to report corruption offences to these authorities (art. 39)
- Consider establishing its jurisdiction over offences committed against the Gambia or its nationals (art. 42(2)(d) and (2)(a), respectively)
- Consider developing measures to improve data collection for statistical purposes

2.4. Technical assistance needs identified to improve implementation of the Convention

- On-site assistance by an anti-corruption expert (arts. 15, 19, 20, 22, 25, 30, 34, 35, 37–39 and 41)
- Legal advice (arts. 17, 23, 26, 33 and 36)
- Development of action plans to implement the Convention (arts. 17, 18, 20, 22, 24–26, 29, 34–36)

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

In the Gambia, the legal framework regulating extradition in corruption cases consists mainly of the Extradition Act of 1986, the relevant provisions of the AML/CFT Act of 2012, the Convention against Corruption, the ECOWAS Convention on Extradition of 1994 (ECOWAS Extradition Convention) and relevant bilateral agreements with Senegal. The Convention against Corruption or ECOWAS Extradition Convention are yet to be incorporated fully into the domestic legislation.

The Gambia has not yet informed the Secretary-General of the United Nations whether the Convention constitutes a legal basis to cooperation on extradition and it was reminded of its obligation to inform the Secretary-General of whether the Gambia takes the Convention as the legal basis for cooperation on extraditions.

According to the Extradition Act, the Gambia does not make extradition conditional on the existence of a treaty in relation to declared Commonwealth countries specified in the Act (sect. 3 and its schedule). For any other foreign States, a treaty is required (sect. 4). At present, there is only one such a treaty with Senegal (the Judicial Convention Agreement with Senegal of 1973 (JCA)).

Furthermore, the Extradition Act requires all extradition requests to be addressed to the Attorney-General of the Gambia who decides whether to issue an Order (authority) to proceed. In the absence of such an Order, a Magistrate may issue a warrant to provisionally arrest a person on information that they are or are believed to be in the country (sect. 9 of the Extradition Act) and notify the Attorney-General. Such an arrest may be made if there is an International Criminal Police Organization (INTERPOL) notice received by the Inspector-General of the Police (sect. 9 (2)).

Dual criminality is a requirement according to section 6 (extraditable offences) of the Extradition Act. Section 6 also stipulates that the maximum penalty for an offence to be an extraditable offence is at least 12 months of imprisonment. Accessory offences are extraditable according to paragraph 3 of section 7 (general restrictions on extradition). Section 7 also lists grounds to deny extradition request if it is sought for discriminatory purposes: if the alleged offence is of a political character, if the request is made for the purpose of punishing the person on account of their race, religion, nationality or political opinions, or if the person may be prejudiced at trial or punished, detained or restricted in their personal liberty by reason of his or her race religion, nationality or political opinions.

No measures to simplify extradition or evidentiary requirements with respect to corruption offences have been adopted so far.

Constitutional fair trial guarantees as provided in section 24 of the Constitution apply fully to extradition proceedings (sect. 11 of the Extradition Act). In addition, section 12 of the Act provides persons in custody in extradition proceedings with the right to apply for a writ of habeas corpus.

The Gambia extradites its own nationals to any declared Commonwealth country or foreign State except Senegal (art. 22 of JCA). Conditional extradition of its nationals

is not provided. The principle of *aut dedere aut judicare* with respect to Senegal is enshrined in the same article of the JCA.

Similar to article 9 of the ECOWAS Extradition Convention, the Extradition Act does not provide grounds to refuse an extradition request alleging commission of offences involving fiscal matters.

In the absence of a specific legislative provision, the Gambia, as a matter of general practice, provides to requesting States an opportunity to provide supplementary information before refusing extradition.

The transfer of criminal proceeding is regulated in the ECOWAS Mutual Legal Assistance Convention to which the Gambia is a party (arts. 21–32). However, this Convention is yet to be incorporated into the domestic legislation by an Act of the National Assembly.

Mutual legal assistance (art. 46)

The Gambia does not have stand-alone domestic legislation that regulates mutual legal assistance in criminal matters and instead applies the relevant parts of various acts such as the AML/CFT Act. However, the AML/CFT Act applies to the offence of money-laundering only (sect. 72 (2)). A bill on mutual assistance in criminal matters is currently in development.

The Gambia is a party to the ECOWAS Convention on Mutual Assistance in Criminal Matters but it has not been incorporated into the domestic legislation yet. Existence of a treaty is not required to render assistance to foreign States but the principle of reciprocity must be followed. The provisions of the Convention on mutual legal assistance cannot be applied directly.

Dual criminality is a requirement under the AML/CFT Act. It specifies that competent authorities may refuse a request if it seeks an action which is contrary to the Constitution of the Gambia or its execution is likely to be prejudicial to the national interests of the Gambia. Bank secrecy is not a ground to decline requests.

Also, the AML/CFT Act allows for obtaining in the courts of the Gambia on behalf of the requesting State by competent authorities of, inter alia, search warrants (sect. 73), property tracking orders (sect. 74), freezing or forfeiture orders (sect. 75), and orders to deliver documents or persons before a local court to produce evidence (sect. 76). Sections 81 and 82 list the requirements as to the form and content of mutual legal assistance requests.

As a matter of practice, authorities may spontaneously transmit information to another State, provide an opportunity to amend the request before refusing it and inform the reasons in case of refusal. However, no examples of such practices have been provided.

Confidentiality of requests is partly covered by section 85 of the AML/CFT Act. This section criminalizes interference with the execution of any order made pursuant to mutual assistance requests by falsifying, concealing, destroying or disposing relevant documents or materials or by divulging any information that would likely prejudice the investigation pursuant to which the order is to be or is made.

The Gambia has not notified the United Nations Secretary-General of the central authority designated to receive mutual legal assistance requests. Similarly, no notification has been made of the acceptable language or languages of such requests. In practice, however, the requests are received by the Attorney-General's Chambers, Ministry of Justice of the Gambia.

The Gambia was reminded of its obligation to notify the Secretary-General of the designated central authority responsible to receive requests for mutual legal assistance and of the language or languages of such requests.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The Gambia is a member of the African Union Mechanism for Police Cooperation (AFRIPOL) and INTERPOL and a party to the ECOWAS Cooperation Agreement between Member States' Police Forces on Investigation in Criminal Matters of 2002. The FIU of the Gambia is a member of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) but not of the Egmont Group.

Section 4 (c) of the AML/CFT Act permits the FIU to exchange information with its counterparts and to conclude agreements for the same purpose. Section 6 of the National Security Agencies Act entrusts SIS with the power to enter into cooperation arrangements with external security agencies as necessary.

The investigative authorities of the Gambia cooperate with other countries and have previously conducted joint investigations with Brazil, Ghana, Morocco, Senegal and the United Kingdom of Great Britain and Northern Ireland, albeit regarding other offences.

Controlled delivery and undercover operations are explicitly allowed under the Drug Control Act (sect. 64) but can be used for investigations of other offences.

The Gambia has not concluded any international agreements or arrangements to use special investigative techniques in the context of cooperation at the international level.

3.2. Successes and good practices

- Interference with the mutual legal assistance process and breaking its confidentiality are criminal offences

3.3. Challenges in implementation

It is recommended that the Gambia:

- Amend the existing or adopt a new comprehensive Extradition Law in full conformity with the requirements of the Convention against Corruption (art. 44)
- Ensure that all corruption offences are extraditable either by explicitly listing them or ensuring that they carry the minimum penalty as required for extradition (art. 44 (1))
- Consider granting extradition in the absence of dual criminality (art. 44 (2))
- Endeavour to simplify extradition procedures and evidentiary requirements to expedite the process in relation to corruption offences (art. 44 (9))
- Adopt a new comprehensive legislation on mutual assistance in criminal matters in full conformity with the requirements of the Convention against Corruption (art. 46)
- Ensure that the special investigative techniques are explicitly provided for corruption offences in the relevant legislation (art. 50)
- Conclude bilateral or multilateral agreements to enhance international cooperation on extradition, mutual legal assistance, transfer of sentenced persons or of criminal proceedings, law enforcement cooperation, joint investigations and special investigative techniques (arts. 44–50)

3.4. Technical assistance needs identified to improve implementation of the Convention

- Assistance in legislative drafting or on-site assistance by a relevant expert (arts. 44–50)